IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2893 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRENIKBHAI KASTURBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for M/S THAKKAR ASSOC. for Petitioner

MR HL JANI Learned APP for Respondent No. 1

MR AMIT J SHAH for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2001

ORAL JUDGEMENT

Heard Mr. P.M.Thakkar for M/s. Thakkar Associates on behalf of the petitioner, Mr. H.L.Jani learned APP for respondent no.1 - State and Mr. Amit Shah learned advocate for respondent no.2 - CBI, Ahmedabad /Gandhinagar.

2. The petitioner has prayed to quash and set aside the proceedings initiated vide Criminal Complaint being R.C. No. 9(A)/1997-ABD-CBI, Gandhinagar on the ground that FIR registered vide above stated number does not involve the petitioner in the offences alleged therein and as such, petitioner has approached to this Court under Section 482 of the Criminal Produce Code, 1973 (for short "the Code").

3. True copy of FIR produced at Annexure-A disclose the facts that one Mr. K.K.Mukhopadhyay, the then Managing Director of Krishak Bharati Cooperative Society Ltd. (for short "Kribhco") along with Mr. H.C.Malhotra, the Managing Director, Mr. U.N.Mehta, Joint Managing Director and M/s. Deepak Nitrite Ltd. a company registered under the provisions of Companies Act,1956 are shown as accused for the offences made punishable under Sections 120-B, 420 of the Indian Penal Code as well as under Section 13(2) read with Section 13(1)(d) of the Prevent ion of Corruption Act, 1988 (for short "the Act").

It is averred and stated in FIR that information was received that the accused stated therein during the year 1994-95 entered into a conspiracy with M/s. Deepak Nitrite Ltd., Baroda with an object to obtain pecuniary advantage by abusing their position as public servant and allowing discount of Rs. 1000/- per M.T. instead of Rs. 150/- per M.T.; when the rate of ammonia was of Rs. 6000/- per M.T. in the month of July, 1994. Furthermore, on 13.2.1995, the rate of ammonia was raised from 6400/- to Rs.7000/- per M.T. for the year 1995-96, even then the said firm was allowed to lift ammonia by giving discount of Rs. 1000/- per M.T. on the old rate i.e. Rs. 6400/- per M.T. and in this way, from 13.2.1995 onwards pecuniary advantage of Rs. 1600/- per M.T. was given to the said firm by abusing their position as public servant and not intimating the plant at Surat about the enhanced and revised rates of ammonia. It is also alleged in FIR that the Kribhco plant of Surat could maintain a maximum stock of 4000 M.T. of ammonia at the plant. The stock of ammonia has come down within the permissible limit on 13.3.1995 even then the special discount of Rs.1000/- per M.T., was continued to be given to M/s. Deepak Nitrite Ltd., Baroda and was allowed to lift ammonia upto the end of May, 1995. In this way, during the period from June, 1994 to May, 1995 pecuniary advantage of Rs. 33.47 lacs; approximately; was given by enhancing the discount from Rs. 150/- to Rs. 1000/- without any genuine reasons and by not bringing the

revised rates of Rs. 7000/- per M.T. to the knowledge of Kribhco at plant level. Thus, they have cheated Kribhco by abusing their position as public servant being in conspiracy with M/s. Deepak Nitrite Ltd. Baroda. It is also stated in FIR that the said information disclose the commission of offence made punishable under Sections 120-B and 420 of Indian Penal code and Section 13(2) read with Section 13(1)(d) of the Act.

4. The petitioner happens to be the Chairman of M/s. Deepak Nitrite Ltd., Baroda and has averred in the petition that he has not been involved in the day to day business affairs of the said Company. That though his name is not stated in the FIR; during the investigation, he apprehended his arrest on the information received and had to obtain anticipatory bail as well as regular bail as ordered by the Court while granting the anticipatory bail and thereafter, has approached to this Court with a prayer as stated hereinabove.

5. On behalf of respondent no.2 one Mr. K.M.Parmar, Inspector of Police, CBI, Gandhinagar has filed affidavit in reply sworn on 20.12.2000 and in para.2 of the affidavit, he has stated that the business decisions of M/s. Deepak Nitrite Ltd. were taken under the supervision of the petitioner and, therefore, petitioner is also liable for offences made punishable under Section 120-B of the Indian Penal Code along with other accused.

6. Shri Amit Shah learned advocate appearing for respondent no.2 has advanced tenacious submissions; contenting that now, the charge sheet is already filed in the present matter and as such, the petitioner should be directed to claim discharge before the Trial Court. It is further submitted that High Court shall not exercise the powers under Section 482 of the Code lightly and shall exercise the same sparingly; only in the rarest of rare cases as elaborated by the Hon'ble Apex Court in the well celebrated judgement rendered in the matter of State of Haryana Vs. Bhajan Lal reported vide AIR 1992 SC 604. It is also submitted by Shri Shah that while exercising powers under Section 482 of the Code, the Court should not enter into the minute details of the facts nor should it decide the truth or otherwise of the facts. That the scrutiny of the facts should be left to the Trial Court while deciding the matter in accordance with law.

Shri Shah has placed reliance on the observations made in the following matters to support the submissions.

(i) Radhey Shyam Vs. Kunj Behari and Others, 1990 Cri.L.J. 668

(ii) State of Bihar Vs. Narain singh, 1991 Cri.L.J. 1416 (SC)

(iii) Radhey Shyam Khemka and Anr. Vs. State of Bihar, 1993 Cri.L.J. 2888 (SC)

(iv) Mustaq Ahmed Vs. Mohd. Habibur Rehman Faizi and others.,1996 SCC (Cri) 443

(v) Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd. and Others, (2000) 3 SCC 269.

(vi) Hardev Singh Vs. State of Bihar, 2000 (4) Supreme 261.

(vii) Arun Shankar Shukla Vs. State of U.P., (1999) 6 SCC 146

(viii) State of U.P. Vs. Udai Narayan and Another, 2000 SCC (Cri.) 74.

(ix) Simranjit Singh Mann Vs. State of Bihar, AIR 1987 Cri.L.J. 157 (SC)

(x) State of M.P. Vs. S.B.Johari and Others, 2000 SCC (Cri.) 311

(xi) Hari Shankar Jalan Vs. Food Inspector, Cherukole and Others, 1997 SCC (Cri.) 968.

(xii) State of Bihar Vs. P.P.Sharma and Another, 1991 (2) Crime 113

(xiii) State of Delhi Vs. Gyan Devi, 2000 AIR SCW 3844

7. That in the matter of State of Haryana Vs. Brijlal Mittal and Others reported vide 1998 SCC (Cri.) 1315; the Hon'ble Apex Court has reiterated the proposition vide para.8 to the effect that; simply because a person is Director of a company he does not vicariously become liable for the offence committed by the company - It must be shown that he was in charge of the company and also responsible to the company for the conduct of its business.

In the instant case the affidavit-in-reply filed on behalf of respondent no.2, does not disclose any facts

from which any reasonable inference could be drawn that the petitioner as a Chairman of M/s. Deepak Nitrite Ltd. was connected in any way to the day to day business affairs of the company. That no material of charge sheet is produced on record or shown to the Court which could connect the present petitioner with the offences alleged in the FIR.

8. It would be pertinent to note that vide earlier order, the respondents were directed to file affidavit in detail so as to support the allegations made in the FIR which could connect the present petitioner. However, except the bald statement that business decisions were taken by M/s. Deepak Nitrite Ltd., Baroda under the supervision of the petitioner, no facts appears to have been shown as collected by the Investigating Officer and if collected has not been produced on record. Under the circumstances, as held in the matter of Bhajanlal (supra) even if uncontroverted version of the FIR is accepted at a face value, there is nothing in the FIR which could connect the present petitioner in respect to offences alleged in the said FIR. It is needless to state that in a catena of subsequent decisions, the Hon'ble Apex Court has held that pendency of an application to claim discharge could not be a bar for a party to approach the High Court under Section 482 of the code and there cannot be a bar for exercise of the power even if charge sheet is filed in the Trial Court when a petition is pending in the High Court.

9. Taking into consideration the overall facts apparent from the material produced on record, even in the context of observation made by the Hon'ble Supreme Court in various 13 authorities cited at Bar on behalf of respondent no.2, when the facts stated in the FIR does not disclose any allegation or any material from which a reasonable inference could be drawn so as to connect the present petitioner with the offence alleged therein, it would be difficult to uphold the submission urged at Bar on behalf of respondent no.2 that this Court should not interfere by invoking the provisions of Section 482 of the Code. On the contrary, as the case of the petitioner fall within the criteria enumerated by the Hon'ble Supreme Court in the matter of Bhajan Lal (supra) and particularly, in view of uncontroverted fact apparent from the petition that petitioner is a senior citizen aged about 74 yeas and has been associated with several educational and charitable institution, details of which are given in para.5 of the petition, it would just and proper to exercise the powers under Section 482 of the Code to quash the FIR and subsequent proceedings

initiated thereunder against the preset petitioner.

10. On the basis of foregoing discussion, the FIR, copy of which is produced at Annexure-A, and subsequent prosecution thereto qua present petitioner is hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

(vipul)